THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.24296 of 2006

DATED 22.11.2006

Between:

Rithika Dress, Sirisha Plaza, Ameerpet,
Hyderabad, represented by its
Proprietrix Smt. Akku Malve and
another. .. PETITIONERS

versus

The Municipal Corporation of
Hyderabad, represented by its
Commissioner, Tank Bund Road, Hyderabad,
and two others. .. RESPONDENTS

WRIT PETITION NO.24296 of 2006

ORDER:

The matter is coming up for admission and Smt.Jyothi Kiran, learned Standing Counsel takes notice on behalf of the respondents.

2. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondents in treating the name Board/board frames fixed by the petitioner on the parapet wall of its business place are as covered by Sections 420 and 421 of Hyderabad Municipal Corporation Act and consequently demanding the fee vide proceedings dated 8.11.2006 in serial No. 7634/No.153/Advt./Nest/MCH/2006-2007, dated 11.4.2006 in serial No.986/Advt/Nest/MCH/2005-2006 for the same is illegal, arbitrary, without jurisdiction and in violation of principles of natural justice and pass such other suitable orders.

3. Several factual details are narrated in paragraphs 3 to 13 of

the affidavit filed in support of the Writ Petition. It is also brought to the notice of this Court that the batch of Writ Petitions were disposed of by this Court in Writ Petition No.5825 of 2006 and batch, dated 8.9.2006. At paragraph 12 of the said order referred to supra, this Court observed as hereunder:

> "In the light of the fact situation, wherever the statute ordains a particular act to be done in a particular manner, the same may have to be done as specified therein unless and otherwise any other procedure be permitted to be followed in accordance with law. There cannot be any two opinions relating to this aspect. Making demand, collection of fee or collection of tax, these are all aspects governed by specific statutory provisions. It is needless to say that the Municipal Corporation of Hyderabad being creation of a statute and being a statutory body, the duties expected to be discharged or performed by the Corporation to be performed by the Corporation itself or through its officials and the realm or the operation of the private agencies and the scope and ambit thereof in relation thereto would be very very limited. This Court is not inclined to express any opinion relating to the contract said to have been entered by the Corporation in favour of a private agency. This Court also is not inclined to express any further opinion whether the private agency who had been entrusted with this duty had made excessive demands or only such demands which were specified by the Municipal Corporation as such. But, however, in the light of the language employed in Section 421 of the Act, this Court is of the considered opinion that to attract the provisions of Section 421 of the Act, the Corporation must satisfy itself first that the provisions are attracted and hence the fee/demand can be levied. This exercise to be made in individual cases and in the peculiar facts and circumstances especially in the light of the decision of the Apex

Court referred (7) supra and also the views expressed by the Division Bench of this Court referred (2) supra, this Court is of the considered opinion that the impugned demand notices as such cannot be sustained and accordingly the said demands made are hereby quashed and the matters are remitted to the Corporation to give opportunity to the individual writ petitioners to make their individual representations and let the Corporation consider and look into such objections which would be raised by the respective writ petitioners and pass appropriate orders in this regard in accordance with law. Accordingly, let the petitioners make such representations as early as possible, preferably within a period of four weeks and the Corporation to take an early decision in relation thereto thereafter".

4. In view of the same, this Writ Petition is hereby allowed to the extent indicated above as already observed by this Court in the batch of Writ Petitions specified supra. No costs.

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22.11.2006

SSR